

## Central Intelligence Agency

## Pt. 1907

The decision that compliance would result in such alteration or burdens must be made by the Agency head or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

### §§ 1906.161–1906.169 [Reserved]

### § 1906.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the Agency.

(b) The Agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Employment Opportunity, is responsible for coordinating implementation of this section. Complaints may be sent to Central Intelligence Agency, Director, Office of Equal Employment Opportunity, Washington, DC 20505.

(d) The Agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Agency may extend this time period for good cause.

(e) If the Agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any

complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, The Agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Agency of the letter required by §1906.170(g). The Agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director.

(j) The Agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Director may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

## PART 1907—CHALLENGES TO CLASSIFICATION OF DOCUMENTS BY AUTHORIZED HOLDERS PURSUANT TO SEC. 1.8 OF EXECUTIVE ORDER 13526

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### RIGHT OF APPEAL

- 1907.31 Right of appeal.

AUTHORITY: Executive Order 13526 75 FR 707, 3 CFR 2010 Comp., P. 298–327; section 102 of the National Security Act of 1947; section 6 of the CIA Act of 1949.

SOURCE: 62 FR 32494, June 16, 1997, unless otherwise noted.

### GENERAL

#### § 1907.01 Authority and purpose.

(a) *Authority*: This Part is issued under the authority of and in order to implement section 1.8 of E.O. 13526, section 102 of the National Security Act of 1947, and section 6 of the CIA Act of 1949.

(b) *Purpose*: This part prescribes procedures for non-Agency personnel who are authorized holders of CIA information, to challenge the classification status, whether classified or unclassified, based on a good faith belief that the current status of CIA information is improper. This part and section 1.8 of Executive Order 13526 confer no rights upon members of the general public or individuals who are not authorized holders of CIA information.

[76 FR 59031, Sept. 23, 2011]

#### § 1907.02 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Authorized holder* means anyone who has satisfied the conditions for access to classified information stated in section 4.1(a) of Executive Order 13526

and who has been granted access to such information; the term does not include anyone authorized such access by section 4.4 of Executive Order 13526.

(c) *Ddays* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this CFR part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(d) *Challenge* means a request in the individual's official, not personal, capacity and in furtherance of the interests of the United States;

(e) *Control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(f) *Coordinator* means the CIA Information and Privacy Coordinator acting in the capacity of Executive Secretary of the Agency Release Panel;

(g) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form, that is:

(1) Owned by, produced by or for, or under the control of the United States Government, and

(2) Lawfully and actually in the possession of an authorized holder and for which ownership and control has not been relinquished by the CIA;

(h) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(i) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

(j) *The Order* means Executive Order 13526 of December 29, 2009 and published at 75 FR 707 (or successor Orders).

(k) *Chief, Classification Management and Collaboration Group* refers to the Agency official authorized to make the

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initial Agency determination with respect to a challenge of the classification status of CIA information.

(1) *Agency Release Panel* refers to the Agency's forum for reviewing information review and release policy, the adequacy of resources available to all Agency declassification and release programs, and hearing appeals in accordance with this section.

[62 FR 32494, June 16, 1997, as amended at 76 FR 59031, Sept. 23, 2011]

### § 1907.03 Contact for general information and requests.

For information on this part or to file a challenge under this part, please direct your inquiry to the Executive Secretary, Agency Release Panel, Central Intelligence Agency, Washington, DC 20505. The commercial (non-secure) telephone is (703) 613-1287; the classified (secure) telephone for voice and facsimile is (703) 613-3007.

### § 1907.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the Executive Order. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

## FILING OF CHALLENGES

### § 1907.11 Prerequisites.

The Central Intelligence Agency has established liaison and procedures with many agencies for declassification issues. Prior to reliance on this Part, authorized holders are required to first exhaust such established administrative procedures for the review of classified information. Further information on these procedures is available from the point of contact, see 32 CFR 1907.03.

### § 1907.12 Requirements as to form.

The challenge shall include identification of the challenger by full name, Executive Branch agency, title of position, and information required for verification of access, security clearance, and status as an authorized holder of the CIA information in question. In addition, the challenger must clearly

identify documents or portions of documents at issue and identify and describe the reasons why it is believed that the information is improperly classified. The challenge, itself, must be properly marked and classified and, in this regard, the authorized holder must assume the current classification status and marking of the information is correct until determined otherwise unless the challenger asserts that the information marked unclassified should be classified or that the information should be classified at a higher level, in which case the challenger should mark the challenge and related documents at the asserted classification level.

[76 FR 59031, Sept. 23, 2011]

### § 1907.13 Identification of material at issue.

Authorized holders shall append the documents at issue and clearly mark those portions subject to the challenge. If information not in documentary form is in issue, the challenge shall state so clearly and present or otherwise refer with specificity to that information in the body of the challenge.

### § 1907.14 Transmission.

Authorized holders must direct challenge requests to the CIA as specified in § 1907.03. The classified nature of the challenge, as well as the appended documents, require that the holder transmit same in full accordance with established security procedures. In general, registered U.S. mail is approved for SECRET, non-compartmented material; higher classifications require use of approved Top Secret facsimile machines or CIA-approved couriers. Further information is available from the CIA as well as corporate or other federal agency security departments.

## ACTION ON CHALLENGES

### § 1907.21 Exceptions.

(a) Documents required to be submitted for prepublication review or other administrative process pursuant to an approved nondisclosure agreement is not covered by this section.

(b) Whenever the Agency receives a classification challenge to information that has been the subject of a challenge

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within the past two years, the Agency is not required to process the challenge beyond informing the challenger of this fact and the prior review decision; advising the challenger of the right to appeal a final Agency decision to the Interagency Security Classification Appeals Panel (ISCAP); and informing the challenger that if they wish to exercise this right, they must do so through Chief, Classification Management and Collaboration Group who will then forward the appeal to the ISCAP.

(c) The Agency is not required to process classification challenges to information that is the subject of pending litigation. If the information that is the subject of a challenge falls into this category, the Agency will take no action on the challenge and will notify the challenger of this fact within 10 business days.

[76 FR 59031, Sept. 23, 2011]

## § 1907.22 [Reserved]

### § 1907.23 Designation of authority to hear challenges.

(a) *Chief, Classification Management and Collaboration Group* shall be responsible for the initial Agency decision in a classification challenge.

(b) *Agency Release Panel (ARP)*. Appeals of denials of classification challenges shall be reviewed by the ARP which shall issue the final Agency decision in accordance with 1907.25(c).

(c) *ARP membership*: The ARP is chaired by the Chief, Information Review and Release Group and composed of the Information Review Officers from the various Directorates and the Director, Central Intelligence Agency area, as well as the representatives of the various release programs and offices. The Information and Privacy Coordinator also serves as Executive Secretary of the Panel.

[76 FR 59032, Sept. 23, 2011]

### § 1907.24. Initial determination.

(a) Formal challenges shall be directed to the CIA Information and Privacy Coordinator (Coordinator) who shall promptly forward the challenge to the C/CMCG for action. The C/CMCG shall be responsible for the administra-

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tive processing of the challenge consistent with this section.

(b) Within 10 business days of receipt of a challenge, the Coordinator shall record the receipt of the challenge and provide the challenger with written acknowledgement of the Agency's receipt.

(c) Except as provided in paragraph (d) of this section, the Agency shall render an initial written response to a challenge within 60 business days of receipt.

(d) If the C/CMCG determines that the Agency is unable to respond with a determination within 60 business days of receipt of the challenge, C/CMCG will inform the Coordinator who will provide the challenger with written notice of the date by which the Agency will respond and a statement that if no Agency response is received within 120 business days, the challenger has the right to have the challenge forwarded to the ISCAP, and may exercise this right through C/CMCG who will then forward the challenge to ISCAP.

(e) The C/CMCG, after consultation with the originator of the information and other parties shall inform the Coordinator of the initial decision on the challenge and the Coordinator shall promptly inform the challenger of the decision in writing and inform the challenger of the right to appeal to the ARP if the challenge was denied.

[76 FR 59032, Sept. 23, 2011]

### § 1907.25 Action on appeal of initial Agency determination.

(a) The challenger may, within 45 calendar days of receiving notice of a denial of the challenge, appeal the denial to the ARP by sending the appeal and any supplementary information in support of the challenge to the Executive Secretary of the ARP (ES/ARP).

(b) Within 10 business days of receipt of an appeal, the ES/ARP will record receipt, provide the challenger with written acknowledgement, and forward the appeal to C/CMCG, the appropriate IMTOs, originator, and other appropriate parties, who shall review the appeal and related materials, and within 30 business days provide a written recommendation to the ARP.

(c) The ARP shall meet on a regular schedule and may take action when a

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simple majority of the total membership is present. Issues shall be decided by a majority of the members present. In all cases of a divided vote, before the decision of the ARP becomes final, any member of the ARP may by written memorandum to the ES/ARP, refer such matters to the Director, Information Management Services (D/IMS) for decision. In the event of a disagreement with any decision by D/IMS related to the classification challenge, Directorate heads may appeal to the Associate Deputy Director, CIA (ADD) for resolution. The final Agency decision shall reflect the vote of the ARP, unless changed by the D/IMS or the ADD.

(d) The ES/ARP shall promptly provide the challenger with written notice of the final Agency decision and, if the appeal is denied, inform the challenger of the right to appeal to the ISCAP through C/CMCG, who will forward the appeal to the ISCAP.

[76 FR 59032, Sept. 23, 2011]

### § 1907.26 Prohibition on adverse action.

Agency correspondence to the challenger shall include a notice that CIA will take no adverse action or retribution against the challenger for bringing the classification challenge in good faith.

[76 FR 59032, Sept. 23, 2011]

#### RIGHT OF APPEAL

### § 1907.31 Right of appeal.

A right of appeal may be available to the ISCAP established pursuant to section 5.3 of the Order. Action by that body will be the subject of rules to be promulgated by the Information Security Oversight Office.

[76 FR 59032, Sept. 23, 2011]

## PART 1908—PUBLIC REQUESTS FOR MANDATORY DECLASSIFICATION REVIEW OF CLASSIFIED INFORMATION PURSUANT TO SEC. 3.5 OF EXECUTIVE ORDER 13526

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#### AGENCY ACTION ON MDR APPEALS

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#### FURTHER APPEALS

- 1908.41 Right of further appeal.

AUTHORITY: Executive Order 13526 75 FR 707, 3 CFR 2010 Comp., p. 298–327 (or successor orders).

SOURCE: 62 FR 32495, June 16, 1997, unless otherwise noted.

#### GENERAL

### § 1908.01 Authority and purpose.

(a) *Authority:* This part is issued under the authority of and in order to implement section 3.5 of E.O. 13526 (or successor Orders); the CIA Information Act of 1984), as amended (50 U.S.C. 431; section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and section 6 of the CIA Act of 1949, as amended (5 U.S.C. 403g).

(b) *Purpose:* This part prescribes procedures, subject to limitations set forth below, for members of the public to request a declassification review of information classified under the Executive Order 13526 or predecessor Orders. Section 3.5 of Executive Order 13526 and these regulations are not intended to and do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United